

1	IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION	1	APPEARANCES:
2		2	Attorneys for the Plaintiff:
3		3	KEOGH LAW, LTD.
4		4	BY: KEITH J. KEOGH, ESQ.
5	VITO A. PESCE, on behalf of *	5	101 North Wacker Drive
6	himself and all other similarly *	6	Suite 605
7	situated, *	7	Chicago, Illinois 60606
8	Plaintiff, *	8	866-726-1092
9	Vs * 11-cv-1379	9	(Via Telephone)
10	FIRST CREDIT SERVICES, INC., dba *	10	Attorneys for the Defendants:
11	ACCOUNTS RECEIVABLE TECHNOLOGIES, *	11	HINSHAW & CULBERTSON, LLP
12	Defendants. *	12	BY: JAMES C. VLAHAKIS, ESQ.
13		13	222 North LaSalle Street
14		14	Suite 300
15	DEPOSITION OF FRANK RUSSO	15	Chicago, Illinois 60606
16	THURSDAY, NOVEMBER 17, 2011	16	312-704-3000
17	WOODBIDGE, NEW JERSEY	17	
18	10:00 A.M. - 3:00 P.M.	18	
19		19	
20		20	
21		21	
22		22	
23	REPORTER:	23	
24	Charles R. Senders,	24	
25	License No. 596	25	
1	IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION	2	I N D E X
2		2	EXAMINATION PAGE
3		3	By: Mr. Keogh 5, 148
4		4	By: Mr. Vlahakis 141
5	VITO A. PESCE, on behalf of *	5	
6	himself and all other similarly *	6	
7	situated, *	7	
8	Plaintiff, *	8	
9	Vs * 11-cv-1379	9	
10	FIRST CREDIT SERVICES, INC., dba *	10	E X H I B I T S
11	ACCOUNTS RECEIVABLE TECHNOLOGIES, *	11	NUMBER DESCRIPTION PAGE
12	Defendants. *	12	Exhibit 1 Notice of Deposition 9
13		13	Exhibit 2 Affidavit of M. Leraris 59
14		14	Exhibit 3 Series of Emails 72
15	TRANSCRIPT of the stenographic	15	Exhibit 4 Series of Emails 82
16	notes of the proceedings in the above entitled	16	Exhibit 5 LiveVox Voice Portal 93
17	matters, as taken by and before CHARLES R.	17	Exhibit 6 First Set of Interrogatories 96
18	SENDERS, Certified Shorthand Reporter (License	18	Exhibit 7 Supplemental Answers 101
19	No. 596) and Notary Public of the State of New	19	Exhibit 10 Declaration of Frank Russo 120
20	Jersey, held at the offices of N.J. Steno,	20	
21	Inc., 171 Green Street, Woodbridge, New Jersey	21	
22	on Thursday, November 17, 2011, commencing at	22	
23	10:00 in the morning, pursuant to notice.	23	
24		24	
25		25	

<p style="text-align: right;">5</p> <p>1 F R A N K R U S S O, residing at 30 Sea Breeze 2 Lane, Staten Island, New York 10307, 3 being first duly sworn according to law by 4 the Notary, testifies under oath as 5 follows: 6 MR. KEOGH: Let the record reflect 7 that this is a Federal Rules of Civil Procedure 8 30(b)6 Deposition pursuant to notice to the 9 court reporter on today's date, for the 10 Northern District of Illinois. 11 DIRECT EXAMINATION BY MR. KEOGH: 12 Q. Mr. Russo, have you ever been 13 deposed before? 14 A. Have I been deposed before-- can 15 you speak up? 16 MR. VLAHAKIS: I'm sorry, Keith, but 17 can I ask you to repeat it, because I'm not 18 hearing you very well.. 19 MR. KEOGH: Don't worry, I'll talk 20 slow. 21 (Whereupon, a short recess takes 22 place). 23 Q. Mr. Russo, the question was, have 24 you ever been deposed before? 25 A. Yes, I have.</p>	<p style="text-align: right;">7</p> <p>1 Q. Then back to the general ground 2 rules. Mr. Russo, if you answer a question 3 I'll assume you understand it. Is that fair? 4 A. Yes. 5 Q. Obviously, what we already talked 6 about, if you don't hear the question or if I 7 speak too fast, just ask me to rephrase it or 8 repeat it and I will, okay? 9 A. Yes. 10 Q. All right. Now, you already gave 11 your name and address. Can you give me your 12 highest level of education? 13 A. College degree. 14 Q. In what? 15 A. Finance, bachelor's from St. John's 16 University. 17 Q. What year did you graduate? 18 A. 1990. 19 Q. Do you have a BS or BA? 20 A. BS. 21 Q. Do you hold any other degrees? 22 A. I'm sorry? 23 Q. Do you hold any other degrees? 24 A. I do not, no. 25 Q. Do you hold any certifications,</p>
<p style="text-align: right;">6</p> <p>1 Q. How many times? 2 A. One time. 3 Q. What did that relate to? 4 A. It was a related matter to an 5 employee lawsuit. 6 Q. That's it? 7 A. That's it, that's it. 8 Q. Even though you've been deposed 9 before, I'll give you some general ground 10 rules. Honestly, especially since we're doing 11 this telephonically I need you to answer 12 verbally. Shaking of the heads or uh-huh or 13 ah-hum doesn't cut it, you understand? 14 A. I do. 15 MR. VLAHAKIS: Keith, quick 16 question for, are you speaking into a speaker 17 as well. 18 MR. KEOGH: Yes. 19 MR. VLAHAKIS: If you got off your 20 speaker, because now it's like double speaker. 21 You speak just into the phone, that's why I 22 think it sounds bad. 23 MR. KEOGH: Is this better? 24 MR. VLAHAKIS: The court reporter 25 is nodding, too, that this is better.</p>	<p style="text-align: right;">8</p> <p>1 professional certifications? 2 A. Can you explain that a little 3 further to me. 4 Q. Sure. Realtor, you know, 5 accountant, are you an accountant? 6 A. No, I don't. 7 Q. It would also include a type of 8 certification in professional consumer 9 protection compliance? 10 A. You asked me as to certifications. 11 Do you want me to answer? 12 MR. VLAHAKIS: Let me put you on 13 hold. Let me talk to Ron, see if I can do 14 better than this. 15 (Short recess takes place). 16 Q. Let me start where we left off, 17 hopefully march through this. Mr. Russo, I'm 18 asking you about any certifications you held 19 and I gave you a of examples. Do you hold any 20 certifications? 21 A. No. 22 Q. Do you have any education related 23 to information technologies? 24 A. No. 25 Q. Do you have any training relating</p>

<p style="text-align: right;">105</p> <p>1 A. Supplemental answer?</p> <p>2 Q. Yes.</p> <p>3 A. "Subject to and without waiving the</p> <p>4 above objections, pursuant to FRCP 33(d), see</p> <p>5 pdf and tiff documents produced via disk on</p> <p>6 October 31, 2001, which contain contact numbers</p> <p>7 submitted by consumers which were provided to</p> <p>8 Defendant by its creditors/clents.</p> <p>9 Investigation continues".</p> <p>10 Q. Now, the answer provided all the</p> <p>11 contacts you had regarding 3,113 persons?</p> <p>12 A. Okay.</p> <p>13 Q. My question was, are there other</p> <p>14 contracts besides what was provided in that</p> <p>15 disk?</p> <p>16 A. Were those 3,113 on that disk, is</p> <p>17 that your question?</p> <p>18 Q. The question is, are there other</p> <p>19 contracts?</p> <p>20 MR. VLAHAKIS: Keith, are you</p> <p>21 asking have we produced everything that we have</p> <p>22 in hand to date?</p> <p>23 MR. KEOGH: I'm sorry, you got cut</p> <p>24 off because the phone picked up an incoming</p> <p>25 call. I'll rephrase it.</p>	<p style="text-align: right;">107</p> <p>1 those 3,183?</p> <p>2 A. Yes.</p> <p>3 Q. FCS provided a spreadsheet for the</p> <p>4 238 persons?</p> <p>5 A. Yes.</p> <p>6 Q. It provided some contract</p> <p>7 information for those 238 persons?</p> <p>8 A. Yes. We are in the process of</p> <p>9 getting a lot more. This is very, very</p> <p>10 timely. There is one client that as of</p> <p>11 yesterday just asked us to subpoena the</p> <p>12 records. So, you know, it is going to take a</p> <p>13 lot of time to get this documentation. We are</p> <p>14 on a daily basis doing our level best to get as</p> <p>15 many as we possibly can, on a daily basis. It</p> <p>16 is lengthy. We have clients we have to deal</p> <p>17 with. You know, there is a lot of work behind</p> <p>18 this. But, yes, we will.</p> <p>19 Q. I appreciate that. I'm trying to</p> <p>20 figure out what you have in handwriting now and</p> <p>21 then we can talk about what you expect to get</p> <p>22 or are trying to get.</p> <p>23 A. Sure.</p> <p>24 Q. We're talking, as we sit here, of</p> <p>25 what FCS has in hands right now?</p>
<p style="text-align: right;">106</p> <p>1 Q. Mr. Russo, let's take a step</p> <p>2 backwards, do you understand that in this</p> <p>3 litigation FCS has produced a spreadsheet of</p> <p>4 238 persons called. That is the skip trace</p> <p>5 list; correct?</p> <p>6 A. Correct.</p> <p>7 Q. What I mean by skip trace list,</p> <p>8 cell phone numbers that were obtained by skip</p> <p>9 trace as opposed to being-- what I mean by skip</p> <p>10 trace list, the cell phone is obtained via skip</p> <p>11 tracing rather than being obtained through the</p> <p>12 creditors, the 238 persons?</p> <p>13 A. Well, the creditors actually had</p> <p>14 those phone numbers.</p> <p>15 Q. Well, all of them?</p> <p>16 A. From my initial investigation,</p> <p>17 yeah, ninety-five percent of those phone</p> <p>18 numbers were in the hands of our clients and</p> <p>19 were given consent by that customer.</p> <p>20 Q. Let's take a step back, if we're</p> <p>21 talking about the same thing. FCS produced the</p> <p>22 spreadsheet of 238 names?</p> <p>23 A. Correct.</p> <p>24 Q. Out of those 238, are those subset</p> <p>25 of 3,183 persons and those 238 are in those</p>	<p style="text-align: right;">108</p> <p>1 A. That's 3,183.</p> <p>2 Q. Out of those 3,000 something-- 183</p> <p>3 persons, what does FCS have in hand to show</p> <p>4 consent for those 3,000 some persons?</p> <p>5 A. So far 132.</p> <p>6 Q. So you have documentation and</p> <p>7 consent for 132 persons out of the 3,183?</p> <p>8 A. We're knee deep in investigation.</p> <p>9 We have-- this thing will continue to try to</p> <p>10 get as many consents as we can possibly get.</p> <p>11 But we're very confident that those consents do</p> <p>12 exist.</p> <p>13 Q. That's neither here nor there.</p> <p>14 Right now I'm trying to nail down the numbers.</p> <p>15 So we have 3,183 persons and FCS believes it as</p> <p>16 documents showing consent for 132 right now?</p> <p>17 A. We received back 132 documents.</p> <p>18 Q. Which FCS believes shows consent;</p> <p>19 correct?</p> <p>20 A. Yes, a very high percentage, easily</p> <p>21 at seventy-five percent and arriving by the</p> <p>22 day.</p> <p>23 Q. But the documents I'm talking about</p> <p>24 where only for those 132 that you have?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">109</p> <p>1 Q. So you received 132 documents 2 back. Right now seventy-five percent of the 3 132 show consent. Is that fair? 4 A. We're not done with our 5 investigation yet. 6 Q. I'm not there. If you can just 7 answer the question, we can get through this. 8 You can tell me what else you are doing 9 expecting to get consent for the rest of that. 10 You hope a truckload of documents arrives 11 tomorrow showing consent for every one. 12 I want to talk about what you have 13 right now, then we can talk about what steps 14 you re taking to get the balance of the 15 information, okay? 16 A. Okay. 17 Q. So I'm just going to reiterate what 18 I think we have here. So we have 3,183 19 persons; correct? 20 A. Persons, yes, correct. 21 Q. 22 MR. VLAHAKIS: So Keith, can you 23 stop, 3,183? 24 THE WITNESS: 25 A. I'm sorry, I got 3,113.</p>	<p style="text-align: right;">111</p> <p>1 if that's the right number-- 2 A. Hold on, what was the number you 3 gave me? 4 Q. 2,980? 5 MR. VLAHAKIS: Stop talking over 6 each other. 7 A. 2,980, plus 132, 3,112. Actually, 8 it is 2,989 plus 132, comes out to 3,113, minus 9 132. So the exact number is 2,981. That's the 10 exact number. 11 Q. All right. So for those 2,981 12 persons-- 13 A. Yes. 14 Q. --FCS is still waiting for 15 information to show consent. Is that fair? 16 A. Yes. 17 Q. You mentioned you just received 18 documents. What creditor asked you to subpoena 19 them? 20 A. I'm sorry, say that again? 21 Q. A moment ago you mentioned some 22 creditor requested that FCS subpoena them? 23 A. I believe that was BMW. 24 Q. Okay. Now, I'm going to go through 25 a list here that was given to me. Are you</p>
<p style="text-align: right;">110</p> <p>1 Q. 3,113. Thank you. So we have 2 3,113? 3 A. Correct. 4 Q. So far FCS has documents, 132 5 documents and seventy-five percent of which 6 show consent; correct? 7 A. Yes. 8 Q. Do you have an exact number rather 9 than just seventy-five percent? 10 A. Say that again? 11 Q. Do you know how much--of the 132, 12 exactly how many FCS believes show consent? 13 A. I can get that for you. 14 Q. Please. I know you were saying 15 seventy-five percent. You know, to me that 16 seventy-five percent is ninety-nine. Which 17 means that the others don't have consent right 18 now. 19 A. I can get that for you. 20 Q. But you believe it is around 21 seventy-five percent? 22 A. It is a very high percent, well 23 into the seventy-five range. 24 Q. So, one second here. So for the 25 other 2,908 persons, I have to calculate, see</p>	<p style="text-align: right;">112</p> <p>1 still waiting for additional information from 2 Advanced Mercury? 3 A. I can tell you, Keith, that we will 4 cooperate to our level best to get all of this 5 information. It is a very time consuming 6 process. 7 Q. Okay. 8 A. It is also a process that we can't 9 control. We got to kind of-- you know, it is 10 our client who is giving us this information. 11 Q. Okay. Do you have any time frames 12 on when FCS believes it can obtain all the 13 information it needs to show whether there is 14 consent or not? 15 A. I can tell you, Keith, those 132 16 took well over a month already. If you want to 17 do the math on that. 18 Q. Well, what other creditors are 19 going to send you the documents or you just 20 don't know? 21 A. I'm sorry? 22 Q. I'm trying to figure out what 23 creditors had promised-- you said BMW. What 24 has Advanced Mercury told FCS? 25 A. I don't know on a specific basis,</p>

<p style="text-align: right;">129</p> <p>1 paragraph twenty-three, please?</p> <p>2 A. I'm going to read it.</p> <p>3 Q. Please go, ahead.</p> <p>4 A. All right.</p> <p>5 Q. What does paragraph twenty-three</p> <p>6 state?</p> <p>7 A. Do you want me to read it as stated</p> <p>8 here?</p> <p>9 Q. Yes, if you want, or you can</p> <p>10 summarize?</p> <p>11 A. "When Nuvel/GMAC transmitted this</p> <p>12 account for collection to FCS, it provided two</p> <p>13 numbers as plaintiff's contact number. 847 and</p> <p>14 312. See Exhibit D, placement records and</p> <p>15 Exhibit E (GMAC code sheet identifying 166-181</p> <p>16 as the code from a home number)".</p> <p>17 Q. The 847 number that you referred</p> <p>18 to, the last four digits are 9705; correct?</p> <p>19 A. Yes.</p> <p>20 Q. It is your understanding, as you</p> <p>21 sit here today, that is Mr. Pesce's cell phone</p> <p>22 number?</p> <p>23 A. Yes.</p> <p>24 Q. So FCS' contention is that GMAC</p> <p>25 provided Mr. Pesce's cell phone number to FCS</p>	<p style="text-align: right;">131</p> <p>1 matter for him, when he was absolutely upset</p> <p>2 about his credit report like this? He have</p> <p>3 that cell phone number, without a doubt.</p> <p>4 On top of that, his wife calls in</p> <p>5 and she--I just want to finish this. His wife</p> <p>6 calls in and she provides GMAC with the cell</p> <p>7 phone phone. Number which clearly shows that</p> <p>8 his wife gave a cell phone number of her own.</p> <p>9 Which shows that GMAC could have updated that</p> <p>10 information right there at that point as well.</p> <p>11 Q. Okay. Is that it?</p> <p>12 A. So I'm going to say it one more</p> <p>13 time, I want an exclamation mark on this one.</p> <p>14 Mr. Pesce gave the cell phone number with</p> <p>15 consent, exclamation mark.</p> <p>16 Q. Well, if it is only that simple we</p> <p>17 wouldn't be here, would we?</p> <p>18 A. I think it is that simple.</p> <p>19 Q. All right. Just to be clear, when</p> <p>20 you are referring to Ms. Pesce calling, giving</p> <p>21 her cell phone, there is no record of her</p> <p>22 giving the 9705 number, is there?</p> <p>23 A. There isn't.</p> <p>24 Q. There is no record of GMAC</p> <p>25 verifying how the information from Mr. Pesce,</p>
<p style="text-align: right;">130</p> <p>1 to call; correct?</p> <p>2 A. Mr. Pesce, absolutely, gave his</p> <p>3 cell number to our client, without a doubt.</p> <p>4 Q. All right. What are you basing that</p> <p>5 on?</p> <p>6 A. Lots of things. Number one, our</p> <p>7 client GMAC never did, based on the discovery,</p> <p>8 the information that was looked at, they never</p> <p>9 did any call capture to get that cell phone</p> <p>10 number. There is no evidence at all indicating</p> <p>11 that our client, GMAC, did any skip tracing to</p> <p>12 obtain that cell phone number.</p> <p>13 On top of that, it is common</p> <p>14 procedure for creditors, not just our clients,</p> <p>15 but for creditors across the country, that when</p> <p>16 a customer calls in or they contact somebody,</p> <p>17 it is very customary that they will first seek</p> <p>18 to update contact addresses, information from</p> <p>19 that customer.</p> <p>20 On top of that, your client, Mr.</p> <p>21 Pesce was so concerned about his credit report</p> <p>22 and wrote numerous letters back and forth to</p> <p>23 our client, do you really think that Mr. Pesce</p> <p>24 would not have given his cell phone number to</p> <p>25 call back so that our client can resolve this</p>	<p style="text-align: right;">132</p> <p>1 that he gave the 9705 information, is there?</p> <p>2 A. There is no indication of it right</p> <p>3 now. But I can tell you this investigation to</p> <p>4 get that is not over, my friends.</p> <p>5 Q. All right. Well we'll deal with it</p> <p>6 if it comes up later. Just let's just deal</p> <p>7 with it what we have now?</p> <p>8 A. Right it is not over.</p> <p>9 Q. Do you have any communications from</p> <p>10 Mr. Pesce or have a mailing list, any documents</p> <p>11 of Mr. Pesce, giving the number 9705?</p> <p>12 A. I don't believe so.</p> <p>13 Q. Are there any notations or any</p> <p>14 documents from GMAC showing that Mr. Pesce</p> <p>15 provided that 9705 number?</p> <p>16 A. I did not see that.</p> <p>17 Q. So it seems to me that your</p> <p>18 exclamation point, to give it, is all based</p> <p>19 upon your belief that they had to get it from</p> <p>20 somewhere and it probably happened; am I wrong?</p> <p>21 A. It is there, Keith and we'll find</p> <p>22 it.</p> <p>23 Q. You are saying find it. Meaning</p> <p>24 you don't have it right now; correct?</p> <p>25 A. We don't have it right now. But I</p>

<p>157</p> <p>1 DECLARATION UNDER PENALTY OF PERJURY</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I hereby certify under penalty of perjury that I</p> <p>6 have read the foregoing transcript of my deposition;</p> <p>7 that I have made such corrections as appear noted</p> <p>8 herein in ink, initialed by me; that my testimony as</p> <p>9 contained herein, as corrected, is true and correct.</p> <p>10</p> <p>11 DATED this _____ day of _____, 2011,</p> <p>12 at _____,</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19 _____</p> <p>20 Deponent</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	
<p>158</p> <p>1 C E R T I F I C A T E</p> <p>2</p> <p>3 I, CHARLES R. SENDERS, a Certified</p> <p>4 Shorthand Reporter and Notary Public of the</p> <p>5 State of New Jersey, do hereby certify that</p> <p>6 prior to the commencement of the examination,</p> <p>7 the witness was duly sworn by me to testify to</p> <p>8 the truth, the whole truth and nothing but the</p> <p>9 truth.</p> <p>10 I DO FURTHER CERTIFY that the foregoing is</p> <p>11 a true and accurate transcript of the testimony</p> <p>12 as taken stenographically by and before me at</p> <p>13 the time, place and on the date hereinbefore</p> <p>14 set forth, to the best of my ability.</p> <p>15 I DO FURTHER CERTIFY that I am neither</p> <p>16 a relative nor employee nor attorney nor</p> <p>17 counsel of any of the parties to this action,</p> <p>18 and that I am neither a relative nor employee</p> <p>19 of such attorney or counsel, and that I am not</p> <p>20 financially interested in the action.</p> <p>21</p> <p>22</p> <p>23</p> <p>24 _____</p> <p>25 CHARLES R. SENDERS, CSR NO. 596.</p>	